



SARASOTA
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Journal

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Reenact Florida's Auto No-Fault Law, But First Fix the Big PIP Dent

Florida's expensive automobile insurance system runs rough and misfires, but it's not time to junk the no-fault model the state adopted in 1971. However, a deft recalibration of the \$10,000 Personal Injury Protection (PIP) coverage would bring the rights of the injured into balance with the ability of insurance carriers to make a reasonable profit. According to a November 2005 report by the Florida Senate Committee on Banking and Insurance, recent auto insurance reforms haven't resolved all the problems in Florida's no-fault system.

PIP was set up to provide those injured in an accident with immediate access to \$10,000 of medical benefits. In exchange for prompt payment of PIP benefits, the at-fault party and his/her liability insurance company receive a set-off for PIP benefits paid or payable.



No-fault does not need to be scrapped. In fact, it works fairly well. As the Florida Legislature contemplates reenactment of the state's no-fault law in its upcoming session, it will find a fairly competitive auto insurance market. Coverage is readily available.

Ninety-six percent of vehicles in Florida are covered. Nonetheless, Florida policyholders did absorb significant premium increases, particularly for PIP coverage, from 1999 through 2003. In 2003, the Legislature enacted some reforms. This was followed by rate decreases or very small increases in 2004

and 2005. The National Association of Insurance Commissioners ranks Florida 14th, using 2002 data,

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Insurance Company Delay Results in One Million Dollar Settlement for Family

On June 18, 2004 John Rooney and his son, Tim were riding their motorcycles to their house. They turned off Lockwood Ridge Road into their subdivision just north of University Drive. As they proceeded down the subdivision road, Melissa McAllister drove her BMW across the same street, cutting them off. The Rooneys were unable to avoid the collision.

John and Tim sustained serious injuries from the accident. John was taken via Bayflight to Tampa

General Hospital and remained there for several weeks. The hospital medical bills for both John and Tim approached \$500,000. After discharge from the hospital, both John and Tim required significant medical care. Neither man was able to work or provide for his family following this significant accident.

McAllister, the driver of the car involved in the collision, was insured by Great American Insurance

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One Million Dollar Settlement

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Company for liability limits of \$100,000 per person, \$200,000 per accident. The Rooneys hired our Firm to represent them in their claim for injuries from this accident. Our Firm extended an early offer to Great American to settle all claims in exchange for a timely tender of the policy limits. Great American refused our client's offer and we were forced to file suit. After months of discovery, Great American realized the damages in the case significantly exceeded the available insurance limits. Great American finally tendered the \$200,000 policy limit several months after the offer had expired.

After months of litigation, Great American realized they had failed to settle these claims and had exposed their insured, Melissa McAllister, to a very large excess judgment. Great American failed to follow Florida law requiring an early settlement in cases where damages and liability clearly exceed available insurance coverage. Great American Insurance Company ultimately agreed to settle the case by paying \$1 million to our clients.



Seven Year Battle Comes to A Close

In 1998, Jane Doe (Client's name withheld to protect privacy) was working at a local restaurant when she severely injured her lower back. After some initial conservative treatment, Ms. Doe underwent surgical intervention in an attempt to relieve her inexorable pain. Unfortunately, in a scenario that is all too often seen in cases such as this, her worker's compensation insurance company repeatedly denied medical procedures that were recommended by her treating physicians.

Ms. Doe's attorney, Gregory P. Linehan, represented her in numerous hearings before the Judge of Compensation Claims to secure the recommended benefits. Before Ms. Doe's case was settled in late 2005, she was determined to be permanently and totally disabled, required assistance with daily activities and was wheelchair-bound. Despite her constant battle with the insurance company and her ongoing, chronic pain, Ms. Doe is resolved to live her life to the fullest.

Ms. Doe's case is a prime example of the continuing struggles of Florida workers attempting to navigate the worker's compensation system without a level playing field with the insurance companies.



Florida's Auto No-Fault Law

Continued from page 1

when calculating average premiums per insured vehicle for combined coverage - \$931.15 – and 13th for average expenditures per insured vehicle - \$870.35.

Inadequacy of Motor Vehicle Coverage

On the claims side, however, when Florida policyholders are injured in an accident they suffer because inflation has substantially eroded the PIP benefit level. In addition to a \$10,000 set-off, people injured in an accident are required to prove they have sustained a permanent injury before they can recover damages from the at-fault party for pain, suffering, inability to lead a normal life, mental anguish, etc. This tort exemption represents a serious obstacle (See FL Statute 627.737).

Auto insurers, accounting for 62 percent of Florida's private passenger auto market, reported in a 2006 Legislature survey that 26 percent of PIP claimants exceeded the maximum \$10,000 level and that the average PIP payment per claimant was \$4,906.

If the average cost of medical claims per accident is only about \$4,900, and the policyholder is paying premiums based on the \$10,000 PIP amount, then the policyholder is receiving only 49% of the coverage he or she pays for.

In addition, the tort exemption discourages injured policyholders from pursuing claims against at-fault persons and their liability insurance. The barrier is financial, says attorney Steven Wittmer. "I can't get policyholders' medical expenses reimbursed because PIP already has paid those, Wittmer says. "So, for further legal action, to pursue a claim for other damages and injuries under Bodily Injury requires an injured person to obtain a medical opinion that says the injury is permanent. You have to hire a medical expert. Usually \$4,906 won't buy enough medical care to get to that determination. Today, that \$10,000 does not nearly pay for as much as it did 26 years ago."

According to the Florida Senate Committee on Banking and Insurance report, the PIP threshold should really be \$25,000. Inflation has substantially eroded the PIP benefit level enacted 26 years ago. The January 1979 level of \$10,000 was worth only \$3,982, as of September 2005, based on the increase in the Consumer Price Index (CPI) since that time. Considered a different way, the \$10,000 PIP limit would be \$25,110 in September 2005, if increased at the CPI rate.



No-Fault Needs Tweaking

Under no-fault, victims and their medical providers are compensated for medical care much quicker than they would be under a traditional tort system. However, the efficiencies from no-fault due to less litigation and expense in proving fault have not been fully realized because of the expense of investigating and litigating the cost and use of medical services reimbursed by PIP. Reforms in 2003 have been somewhat effective in reducing such litigation.

Insurance industry data shows that PIP loss costs leveled off in 2004 and early 2005, but have outpaced the costs of other no-fault states for the past five years. This reduction is directly attributed to the 2003 legislative reforms. In addition to these reforms insurance companies can by law terminate PIP benefits when a medical doctor declares further medical care is not necessary.

With low PIP costs, recent legislative reforms to curb fraud and the ability to terminate benefits, the insurance industry is well protected. Now it's time to increase the benefit level for consumers to keep pace with the 21st century!

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In the next Sarasota Litigator Journal, Part 2 of our feature on Florida's no-fault auto insurance system.

Next time in Sarasota Litigator Journal, we'll provide an overview of how PIP works and examine whether the PIP "threshold" is really necessary.

Now Accepting Case Referrals

The law firm of Steven T. Wittmer is accepting referrals of cases in the areas of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

Here are 4 good reasons why you can be confident when referring cases to our firm:

1. We are a local firm. Our practice and our families are part of the fabric of the Sarasota community. Locally referred clients will receive the most attentive, personalized service.
2. Our firm understands insurance coverage issues. We can make sure all available insurance coverages are located.
3. We are passionate about obtaining the maximum recovery for our clients, and will try the case to a jury if necessary to obtain the best results.
4. Recoveries in excess of available insurance coverage generate greater recoveries for our clients and larger referral fees to referring attorneys.

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